



December 15, 2000

Ms. Rene Ruiz
Matthews and Branscomb
112 East Pecan, Suite 1100
San Antonio, Texas 78205

OR2000-4719

Dear Ms. Ruiz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142288.

Brighton School, Inc. (the "school"), which you represent, received a request for copies of its monthly expenditures as well as its year end financial statements, including the tax return and tax schedule for the fiscal year of September 1, 1998, through August 31, 1999. First, you contend that the school is not a governmental body for purposes of the Public Information Act (the "act"). Second, you assert that the requested tax return information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

The act requires "governmental bodies" to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines "governmental body," in part, as follows:

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Gov't Code § 552.003(a)(10).

Courts, as well as this office, previously have considered the scope of the act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses "governmental bodies" subject to the act "simply because [the persons

or businesses] provide specific goods or services under a contract with a government body.” *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that the attorney general’s opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.”

Id. As the *Kneeland* court noted, when considering the breadth of the act’s definition of “governmental body,” this office has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support. For example, Open Records Decision No. 228 (1979) considered whether the North Texas Commission (the “commission”), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, constituted a “governmental body” under the act. Open Records Decision No. 228 at 1 (1979). The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission to, among other things, “[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City’s interests and activities.” *Id.* at 2. Noting this provision, Open Records Decision No. 228 stated, “[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of “supporting” the operation of the Commission with public funds within the meaning of section 2(1)(F). *Id.* Accordingly, the decision found the commission to be a governmental body for purposes of the act. *Id.*

You explain that the school operates and maintains two programs—the Early Childhood Intervention Program (the “ECI program”) and the Bright Beginnings Child Development Program. You further explain that the ECI program is funded by state and federal funds,

grants from private foundations, and private donations. The school uses these funds to provide services “to Texas families residing in Bexar County who have babies and toddlers, ages zero to three, with disabilities or developmental delays.” Specifically, the funds are used for services such as “early identification, screening, and assessment services, medical services only for diagnostic or evaluation purposes, special instruction, family education, home visits, speech and language therapy, occupational therapy, physical therapy, family counseling, social work services, nutrition services, assistive technology devices and services, and health services necessary to enable the child to benefit from the other early intervention services.” However, you note that the grant of public funds is not unrestricted. Indeed, you have submitted a contract between the school and the Interagency Council on Early Childhood Intervention (the “council”) in which the school agrees to provide services in compliance with the council’s delineated standards and the council agrees to reimburse the school for its expenses in so doing. Specifically, the contract states that the council’s goal “is to ensure that all children in Texas who are below the age of three (3) and have developmental delays or are at risk of developmental delay receive comprehensive services that are provided in partnership with families, within community contexts.” The contract then provides that “[a]s a partner with [the council] in achieving this goal, [the school] will implement a program of early childhood intervention services for all identified children with developmental delay in the approved service area in accordance with the specific objectives outlined in the application submitted to and approved by [the council].”

As noted above, in JM-821 (1987), the Attorney General stated, “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” Upon review of the submitted contract, we conclude that, to the extent that the school is operating and maintaining the ECI program, the school and the council, with which the school contracts, have a common purpose and objective in providing early childhood intervention services for children of this state with developmental delays. Therefore, in the absence of other information from the school establishing that the funds received from the council with which the school contracts are not used for the general support of the school in operating the ECI program, we conclude that the school is a governmental body only to the extent it operates and maintains the ECI program for which it is receiving public funds from the council.

You contend that the school should be considered a governmental body only to the extent it receives state funds from the council under the contract. Under section 552.003(1)(A)(x) of the Government Code, only that part, section, or portion of an organization, corporation, committee, institution, or agency that spends or *that is supported in whole or in part by public funds* is considered a governmental body. Gov’t Code § 552.003(1)(A)(x) (emphasis added). “Public funds” are defined as “funds of the state or of a governmental subdivision of the state.” Gov’t Code § 552.003(5). You have supplied this office information that shows that the council provides the school with federal and state funds for its ECI program. You state that “[t]o [your] knowledge, [the] federal grants are not deposited in the state treasury so as to make them state funds.” However, we note that section 552.003(1)(A)(x) considers a part of a corporation a governmental body if it is supported in part by public

funds. The information you have provided us reveals that the school's ECI program is funded at least in part by funds from the state general revenue fund. Furthermore, our research indicates that the federal funds received by the school for its ECI program are actually granted to the state by the federal government. *See* 20 U.S.C.A. § 1433. The state is responsible for applying for, receiving, administering, and spending these federal funds, and is required to deposit the funds in the state treasury. *See* Hum. Res. Code § 73.022. We therefore conclude that all of the funds received from the council, regardless of whether they originated from the state or federal government, are public funds for the purpose of the act, and consequently, the school is a governmental body to the full extent it is supported by those funds. *See* Open Records Decision No. 509 (1988).

Finally, you argue that even if the school, or a part thereof, is considered to be a governmental body for the purpose of the act, certain requested tax return and tax schedule information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 6103(a) of the United States Internal Revenue Code renders tax returns and tax return information confidential. "The term 'return' means any tax or information return ... which is filed with the Secretary [of the IRS] by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules" 26 U.S.C.A. § 6103(b)(1). Therefore, to the extent the requested information includes tax returns and tax schedules of the school, such information is confidential under section 6103 of the Internal Revenue Code and is excepted from public disclosure under section 552.101 of the Government Code. However, as you have not raised any other exceptions to required public disclosure,¹ you must release the remaining requested information. *See* Gov't Code §§ 552.301, .302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

¹Initially, you indicated that you sought to withhold the requested information under sections 552.101, 552.110, and 552.116 of the Government Code. However, in your arguments, you withdrew your section 552.110 and 552.116 assertions, and sought an opinion regarding only whether the requested tax return information is excepted from disclosure under section 552.101.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

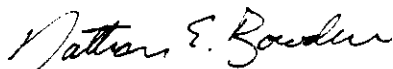
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 142288

cc: Ms. Suzanne McCarty
5623 Spring Moon
San Antonio, Texas 78247